

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

GENESCO INC.,

Plaintiff,

v.

VISA U.S.A. INC., VISA, INC., AND  
VISA INTERNATIONAL SERVICE  
ASSOCIATION,

Defendants.

Civil Action No. 3:13-CV-0202  
Senior Judge William J. Haynes, Jr.

JURY DEMAND

**PLAINTIFF GENESCO INC.'S RENEWED MOTION  
FOR SUMMARY JUDGMENT**

Plaintiff Genesco, Inc. (“Genesco”) respectfully moves the Court, pursuant to Fed. R. Civ. P. 56(a), for the entry of summary judgment in Genesco’s favor on Genesco’s First through Seventh Causes of Action by renewing its previously submitted motions for summary judgment, per the Court’s instructions in its Order dated September 30, 2015 (Dkt. No. 1036).<sup>1</sup> In renewing its previous motions, Genesco reintroduces its two distinct arguments for awarding summary judgment to Genesco. *First*, both the Fines and the Assessments indisputably do not constitute, or purport to represent, Visa’s actual damages by reason of the alleged VIOR violations on which they are supposedly based. Thus, they must meet the legal standards governing liquidated

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<sup>1</sup> Genesco incorporates by reference: its Motion for Summary Judgment on its First Cause of Action or, Alternatively, for Partial Summary Judgment on its Sixth and Seventh Causes of Action (Dkt. No. 564), supporting Memorandum of Law (Dkt. No. 565), Local Rule 56.01 Statement of Undisputed Material Facts (Dkt. No. 566), accompanying Affidavit (Dkt. No. 567) and corresponding Reply Memorandum (Dkt. No. 796); its Motion for Summary Judgment on Its Second Through Fifth Causes of Action (Dkt. No. 674), supporting Memorandum of Law (Dkt. No. 675), Local Rule 56.01 Statement of Undisputed Material Facts (Dkt. No. 676), accompanying Affidavit (Dkt. No. 677) and corresponding Reply Memorandum (Dkt. No. 936) ; and its Partial Motion for Summary Judgment on Its Sixth and Seventh Causes of Action (Dkt. No.702), supporting Memorandum of Law (Dkt. No.703), Local Rule 56.01 Statement of Undisputed Material Facts (Dkt. No.721), accompanying Affidavit (Dkt. No. 705) and corresponding Reply Memorandum (Dkt. No. 954).

damages provisions in order to be valid. But under California law, which governs the VIOR, both the Fines and Assessments fail the test for valid liquidated damages. As such, they are unlawful contractual penalties, and Visa's collection of them was unlawful. Genesco is therefore entitled to summary judgment on its First, Sixth, and Seventh Causes of Action. *Second*, Genesco is entitled to summary judgment under its Second through Fifth Causes of Action and partial summary judgment on its Sixth and Seventh Causes of Action because Visa's imposition and collection of the Assessments violated the express terms of the VIOR—its contract with the Acquiring Banks.

Accordingly, and as explained in more detail in the accompanying Memorandum, summary judgment should be entered in Genesco's favor on its First through Seventh Causes of Action.

Respectfully submitted,

Dated: Nashville, Tennessee  
November 24, 2015

By: /s/ Overton Thompson III  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served, via the Court's electronic filing system, on the following:

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This 24th day of November, 2015.

/s/ Overton Thompson III